



7020-02

## INTERNATIONAL TRADE COMMISSION

### Investigation No. 337-TA-780

#### CERTAIN PROTECTIVE CASES AND COMPONENTS THEREOF

#### NOTICE OF THE COMMISSION'S FINAL DETERMINATION; ISSUANCE OF A GENERAL EXCLUSION ORDER AND CEASE AND DESIST ORDERS; TERMINATION OF THE INVESTIGATION

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has found a violation of section 337 in this investigation and has (1) issued a general exclusion order prohibiting importation of infringing protective cases and components thereof and (2) issued cease and desist orders direct to domestic respondents.

**FOR FURTHER INFORMATION CONTACT:** Panyin A. Hughes, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3042. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on June 30, 2011, based on a complaint filed by Otter Products, LLC of Fort Collins, Colorado (“Otter”). 76 *Fed. Reg.* 38417 (June 30, 2011). The complaint alleged violations of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain protective cases and components thereof by reason of infringement of some or all of the claims of United States Patent Nos. D600,908 (“the D908 patent”); D617,784 (“the D784 patent”); D615,536 (“the D536 patent”); D617,785 (“the D785 patent”); D634,741 (“the D741 patent”); D636,386 (“the D386 patent”); and claims 1, 5-7, 13, 15, 17, 19-21, 23, 25, 27, 28, 30-32, 37, 38, 42, and 44 of United States Patent No. 7,933,122 (“the ’122 patent”); and United States Trademark Registration Nos. 3,788,534; 3,788,535; 3,623,789; and 3,795,187. *Id.* The notice of investigation named the following respondents: A.G. Findings and Mfg. Co., Inc. of Sunrise, Florida (“A.G. Findings”); AFC Trident Inc. of Chino, California (“AFC Trident”); Alibaba.com Hong Kong Ltd. of Hangzhou, China (“Alibaba.com”); Anbess Electronics Co. Ltd. of Shenzhen, China (“Anbess”); Cellairis Franchise, Inc. of Alpharetta, Georgia (“Cellairis”); Cellet Products of Sante Fe Springs, California (“Cellet”); DHgate.com of Beijing, China (“Dhgate.com”); Griffin Technology, Inc. of Nashville, Tennessee (“Griffin”); Guangzhou Evotech Industry Co., Ltd. of Guangdong, China (“Guangzhou Evotech”); Hard Candy Cases LLC of Sacramento, California (“Hard Candy”); Hoffco Brands, Inc. of Wheat Ridge, Colorado (“Hoffco”); Hong Kong Better Technology Group Ltd. of Shenzhen, China (“Better Technology Group”); Hong Kong HJJ Co. Ltd. of Shenzhen, China (“HJJ”); Hypercel Corporation of Valencia, California (“Hypercel”);

InMotion Entertainment of Jacksonville, Florida (“InMotion”); MegaWatts Computers, LLC of Tulsa, Oklahoma (“MegaWatts”); National Cellular of Brooklyn, New York (“National Cellular”); OEMBargain.com of Wantagh, New York (“OEMBargain.com”; One Step Up Ltd. of New York, New York (“One Step Up”); Papaya Holdings Ltd. of Central, Hong Kong (“Papaya”); Quanyun Electronics Co., Ltd. of Shenzhen, China (“Quanyun”); ShenZhen Star & Way Trade Co., Ltd. of Guangzhou City, China (“Star & Way”); Sinatech Industries Co., Ltd. of Guangzhou City, China (“Sinatech”); SmileCase of Windsor Mill, Maryland (“SmileCase”); Suntel Global Investment Ltd. of Guangzhou, China (“Suntel”); TheCaseInPoint.com of Titusville, Florida (“TheCaseInPoint”); TheCaseSpace of Fort Collins, Colorado (“TheCaseSpace”); Topter Technology Co., Ltd. of Guangdong, China (“Topter”); and Trait Technology (Shenzhen) Co., Ltd. of Shenzhen, China (“Trait Technology”). *Id.* With respect to accused products by Respondent Griffin, Otter asserted only the ’122 patent.

On August 3, 2011, the ALJ issued an ID granting Otter leave to amend the complaint and notice of investigation to add Global Cellular, Inc. of Alpharetta, Georgia (“Global Cellular”) as a respondent. *See* Order No. 3 (August 3, 2011). The Commission determined not to review the order. *See* Notice of Commission Determination not to Review an Initial Determination Granting Complainant’s Motion to Amend the Complaint and Notice of Investigation to Add a Respondent (August 18, 2011).

The following respondents were terminated from the investigation based on settlement agreements, consent orders, or withdrawal of allegations from the complaint: One Step Up, InMotion, Hard Candy, DHGate.com, Alibaba.com, A.G. Findings,

Cellairis, Global Cellular, AFC Trident, Better Technology Group, and OEMBargain.com. The following respondents were found in default: Anbess, Guangzhou Evotech, Hoffco, HJJ, Sinatech, Suntel, Trait Technology, Papaya, Quanyun, Topter, Cellet, TheCaseSpace, MegaWatts, Hypercel, Star & Way, SmileCase, TheCaseInpoint, and National Cellular (collectively “Defaulting Respondents”). Griffin is the only remaining respondent not found in default, and the only respondent that appeared before the Commission.

On June 29, 2012, the ALJ issued his final ID, finding a violation of section 337 by Griffin and the Defaulting Respondents. Specifically, the ALJ found that the Commission has subject matter jurisdiction: *in rem jurisdiction* over the accused products and *in personam* jurisdiction over the respondents. ID at 45-46. The ALJ also found that the importation requirements of section 337 (19 U.S.C. §§ 1337(a)(1)(B), (C)) have been satisfied. *Id.* at 38-45. Regarding infringement, the ALJ found that the Defaulting Respondents’ accused products infringe the asserted claims of the asserted patents and the asserted trademarks. *Id.* at 62-88. The ALJ further found that Griffin’s accused products, the Griffin survivor for iPad 2 and Griffin Explorer for iPhone 4, literally infringe the asserted claims of the ’122 patent but that the Griffin Survivor for iPhone 4 and Griffin Survivor for iPod Touch do not literally infringe the asserted claims of the ’122 patent. *Id.* at 64-78. The ALJ concluded that an industry exists within the United States for the asserted patents and trademarks as required by 19 U.S.C. § 1337(a)(2). *Id.* at 89-108.

On July 16, 2012, Otter filed a petition for review of the ID. That same day, the Commission investigative attorney filed a petition for review. On July 17, 2012, Griffin

filed a petition for review (the Commission granted Griffin's motion for leave to file its petition one day late). On July 24, 2012, the parties filed responses to the petitions for review.

On August 30, 2012, the Commission determined to review a single issue in the final ID and requested briefing on the issue it determined to review, and on remedy, the public interest and bonding. 77 *Fed. Reg.* 54924 (Sept. 6, 2012). Specifically, the Commission determined to review the finding that the accused Griffin Survivor for iPod Touch does not literally infringe the asserted claims of the '122 patent.

On September 14, 2012, the parties filed written submissions on the issue under review, remedy, the public interest, and bonding. On September 21, 2012, the parties filed reply submissions.

Having examined the record of this investigation, including the ALJ's final ID, the Commission has determined to reverse the ALJ's finding that the accused Griffin Survivor for iPod Touch does not literally infringe the asserted claims of the '122 patent. The Commission adopts the ALJ's findings in all other respects.

Having found a violation of section 337 in this investigation, the Commission has determined that the appropriate form of relief is: (1) a general exclusion order prohibiting the unlicensed entry of protective cases and components thereof covered by the claim of the D908 patent, the D784 patent, the D536 patent, the D785 patent, the D741 patent, or the D386 patent, or one or more of claims 1, 5-7, 13, 15, 17, 19-21, 23, 25, 27, 28, 30-32, 37, 38, 42, and 44 of the '122 patent; or that infringe one or more of U.S. Trademark Reg. Nos. 3,788,534, 3,788,535, 3,623,789, or 3,795,187; (2) cease and desist orders prohibiting domestic respondents Cellet, Hoffco, Hypercel, MegaWatts,

National Cellular, SmileCase, TheCaseInPoint, and TheCaseSpace from conducting any of the following activities in the United States, including via internet activity: importing, selling, marketing, advertising, distributing, offering for sale, transferring (except for exportation), and soliciting U.S. agents or distributors for, protective cases and components thereof covered by the D908 patent, the D784 patent, the D536 patent, the D785 patent, the D741 patent, or the D386 patent, or one or more of claims 1, 5-7, 13, 15, 17, 19-21, 23, 25, 27, 28, 30-32, 37, 38, 42, and 44 of the '122 patent; or that infringe one or more of U.S. Trademark Reg. Nos. 3,788,534, 3,788,535, 3,623,789, or 3,795,187; and (3) a cease and desist order prohibiting Griffin from conducting any of the following activities in the United States, including via internet activity: importing, selling, marketing, advertising, distributing, offering for sale, transferring (except for exportation), and soliciting U.S. agents or distributors for, protective cases and components thereof covered by one or more of claims 1, 5-7, 13, 15, 17, 19-21, 23, 25, 27, 28, 30-32, 37, 38, 42, and 44 of the '122 patent.

The Commission has also determined that the public interest factors enumerated in section 337(d), (f), and (g) (19 U.S.C. §§ 1337(d), (f), and (g)) do not preclude issuance of the general exclusion order or cease and desist orders. Finally, the Commission has determined that for Griffin, a bond in the amount of 12.45 percent of entered value for tablet cases and no bond for non-tablet cases is required to permit temporary importation during the period of Presidential review (19 U.S.C. § 1337(j)) of its infringing protective cases and components thereof. For Defaulting Respondents, the Commission has determined that a bond of 331.80 percent of entered value for tablet cases and 245.53 percent of entered value for non-tablet cases is required to permit

temporary importation during the period of Presidential review (19 U.S.C. § 1337(j)) of protective cases and components thereof that are subject to the orders. For all other infringing products, the Commission has determined that a bond of 100 percent of entered value is required to permit temporary importation during the period of Presidential review (19 U.S.C. § 1337(j)) of protective cases and components thereof that are subject to the general exclusion order. The Commission's orders and opinion were delivered to the President and to the United States Trade Representative on the day of their issuance.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, and in sections 210.42-46 and 210.50 of the Commission's Rules of Practice and Procedure, 19 C.F.R. §§ 210.42-46, 210.50.

By order of the Commission.

Lisa R. Barton  
Acting Secretary to the Commission

Issued: October 31, 2012

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